IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO No. 67 of 2006.

Date of Decision: 12th July, 2006.

Surinder Singh …Appellant.

Versus.

Smt. Kubja Devi .. Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Appellant(s): **Mr. R.K.Bawa, Sr.Advocate with Mr. Rajpal Thakur, Advocate.**

For the Respondent(s): No.1. **Mr. Sunil Chauhan, Advocate,**

Deepak Gupta, J. (Oral).

Respondent No.1 Smt. Kubja Devi filed a suit for declaration that she is owner in possession of having 1/3rd share in the suit land. She alleged that she along with Nimo Devi and Kamla Devi had inherited the estate of their father Shri Sita Ram.

Kamla Devi died leaving behind a number of heirs including the present appellant Surinder Singh. According to the plaintiff, Surinder Singh in connivance with the revenue authorities wrongly got his name entered as a tenant in the revenue record. She thereafter approached the revenue authorities for correction of the entries but her application was rejected. However, during these proceedings, she for

the first time came to know that in some earlier proceedings filed by her sister Nimo Devi some compromise had been entered into between Nimo Devi and Surinder Singh and he was shown to be the tenant on the suit land. She challenged the correctness of the revenue entries on various grounds including the ground that the earlier compromise had been entered behind her back to defeat her rights and also that she had never inducted the appellant Surinder Singh as a tenant on the suit land.

The suit of the plaintiff was contested and one of the grounds taken was that the Civil Court had no jurisdiction to decide the dispute. The learned trial Court decided the issue of jurisdiction in favour of the defendants. It held that the Civil Court had no jurisdiction and ordered that the plaint be returned. The trial Court relied upon a Full Bench judgment of this Court in **Chuhniya Devi v. Jindu Ram,** 1991(1) Sim.LC 223, in this regard. The plaintiff Kubja Devi filed an appeal. This appeal has been decided by the Presiding Officer, Fast Track Court who relied upon a latter judgment of the Division Bench of this Court in **Shankar v. Smt. Rukmani and others,** 2003(1) Sim.LC 300 and held that the Civil Court had jurisdiction to hear and decide that dispute. It would be pertinent to mention that the Division Bench of this Court after analysing the entire law in Shankar's case (supra) held as follows:-

> "After analysing the judgment in *Chuhniya Devi v. Jindu Ram's* case (supra) we have no doubt that the jurisdiction of the

Civil Court is barred under the Act if the dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act except in a case where it is found that the statutory authorities envisaged by that Act had not acted in conformity with the fundamental principles of judicial procedure or where the provisions of the Act had not been complied with. But if the dispute of landlord and tenant arises independent of the proceedings under the Act, the Civil Court has the jurisdiction."

This point was again considered by this Court in **Tajdin v. Smt. Milkho Devi and others**, Latest HLJ 2005(HP) 825. This Court after considering the earlier judgments of this Court held as follows:-

"This has been amply clarified by the Division Bench in **Shankar's** case (supra) wherein after analyzing the entire law of the judgment in **Chuhniya Devi's** case (supra) the Division Bench held that if a dispute pertaining to the relationship of landlord and tenant arises during the proceedings of conferment of proprietary rights upon the tenant and the resumption of land by the land owner and the order in respect thereof has been passed by the authorities under the Act the Civil Court will have no jurisdiction except in a case where it is found that the competent authority has acted either in violation of the Rules of Natural Justice or contrary to the provisions of law laid down in the Act or the Rules. If the dispute regarding the relationship of landlord and tenant has no connection with the proceedings under Chapter-X of H.P. Tenancy and Land Reforms Act the

Civil Court would have jurisdiction to hear and decide this dispute.

I am not only bound but am in respectful agreement with the observations of the Division Bench in **Shankar's** case quoted hereinbefore. The bar to the jurisdiction of the Civil Court under Section 112 of the Tenancy and Land Reforms Act will only apply when the validity of proceedings or order made under Chapter X are called in question in any Civil Court. Similarly under Section 115 of the said Act the order in appeal or revision passed by the Collector, Commission or Financial Commissioner can also not be challenged before the Civil Court unless the same is in violation of the principles of Natural Justice or is contrary to the provisions of the Rules or the Act. The foundation for this must be laid in the plaint. It is the averments made in the plaint which will show whether the Civil Court has or does not have jurisdiction to entertain the suit."

In the present case, the dispute may involve the question of tenancy but such dispute has no connection with any proceedings under Chapter X of the H.P. Tenancy and Land Reforms Act and, therefore, the Civil Court has the jurisdiction to hear and decide the dispute.

I find no error in the judgment of the lower appellate court. Hence the appeal being without merit is dismissed in limine.

Before parting with the appeal I must observe that the original suit was filed on 4.5.1993. The evidence is complete and only arguments are to be heard. The learned trial Court is directed to decide

the case as expeditiously as possible and in any event not later than 31st December, 2006.

The parties who are represented in this Court are directed to appear before the trial Court on 21st August, 2006. The registry shall ensure that the records of the case are remitted to the trial Court so as to reach there before the date fixed.

July 12, 2006. (Deepak Gupta),
s. Judge.